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# EXHIBIT A

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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **SEATTLE DIVISION**

11 JOHN DOE #1, an individual, JOHN DOE #2,  
12 an individual, and PROTECT MARRIAGE  
WASHINGTON,

13 Plaintiffs,

14 vs.

15 SAM REED, in his official capacity as  
16 Secretary of State of Washington, DEBRA  
17 GALARZA, in her official capacity as Public  
18 Records Officer for the Secretary of State of  
19 Washington, ROB MCKENNA, in his official  
20 capacity as Attorney General of Washington,  
JIM CLEMENTS, DAVID SEABROOK,  
JANE NOLAND, and KEN SCHELLBERG,  
members of the Public Disclosure  
Commission, in their official capacities, and,  
CAROLYN WEIKEL, in her official capacity  
as Auditor of Snohomish County, Washington,

21 Defendants.

No. 0:09-cv-05456-BHS

**VERIFIED FIRST AMENDED  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

The Honorable Benjamin H. Settle

22  
23 John Doe #1, an individual, John Doe #2, an individual, and Protect Marriage Washington  
24 complain and allege as follows:

25 **Introduction**

26 **1.** This is a civil action for declaratory and injunctive relief arising under the First and  
27 Fourteenth Amendments to the Constitution of the United States.

1       2. This case concerns the constitutionality of the Washington Public Records Act, Wash.  
2 Rev. Code § 42.56.001, *et seq.* (“RCW”), as it applies to the public release of referenda petitions  
3 submitted to the Secretary of State of Washington.

4       3. This is also a pre-enforcement, facial and as-applied constitutional challenge to  
5 Washington’s Public Disclosure Law, RCW § 42.17.010, *et seq.* (the “PDL”). Plaintiffs seek  
6 declaratory and injunctive relief with respect to portions of the PDL because they violate the First  
7 Amendment to the United States Constitution, as incorporated by virtue of the Fourteenth  
8 Amendment to the United States Constitution. Consequently, each is unconstitutional on its face  
9 and as applied to Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington.

10       4. The rights of citizens to peaceably assemble and petition the government for redress of  
11 grievances are among the fundamental rights protected by the Bill of Rights. Inherent within  
12 these rights is the right of individuals to engage in anonymous speech, speech that has “played an  
13 important role in the progress of mankind.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334,  
14 341 (1995); *id.* at 343 n. 6 (citing the Federalist Papers as perhaps the most famous example of  
15 anonymous writing in our nation’s political history). And as the Supreme Court has recognized,  
16 there is nothing inherently suspect with an individual wanting to keep his or her support for an  
17 issue private. *Id.* at 341-42 (“The decision in favor of anonymity may be motivated by fear of  
18 economic or official retaliation, by concern about social ostracism, or merely by a desire to  
19 preserve as much of one’s privacy as possible.”)

20       5. The public release of a referendum petition containing the names and addresses of over  
21 138,500 Washington residents pursuant to Washington’s Public Records Act threatens to  
22 undermine the First Amendment’s goal of encouraging “uninhibited, robust, and wide-open”  
23 debate, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). By publicly disseminating the  
24 names of individuals signing a referendum petition, individuals and organizations hope to make  
25 it personally, economically, and politically unpopular to advocate a position that would seek to  
26 preserve the sanctity of marriage, as traditionally defined as between one man and one woman.

6. Given the sensitive First Amendment rights at issue, Plaintiffs complain that the State of Washington lacks a compelling interest sufficient to justify the public disclosure of referendum petitions.

7. In the alternative, Plaintiffs complain that, if the State possesses a compelling state interest, the Public Records Act is unconstitutional because there is a reasonable probability of threats, harassment, and reprisals if the names and addresses of the petition signers are publicly released.

8. Plaintiff Protect Marriage Washington also challenges the PDL’s threshold for reporting contributions, RCW § 42.17.090(1)(b), both facially and as-applied to it, on the ground that the threshold is not narrowly tailored to serve a compelling government interest in violation of the First Amendment to the United States Constitution.

9. Plaintiff Protect Marriage Washington also challenges the PDL’s \$5,000 campaign contribution limit during the twenty-one days preceding a general election, RCW. § 42.17.105(8), both facially and as-applied to it, on the grounds that it is not narrowly tailored to serve a compelling government interest in violation of the First Amendment to the United States Constitution. *See Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 299-300 (1981) (“*CARC*”) (holding that contribution limits are unconstitutional in the context of a referendum election).

**10.** Given the nature of the rights asserted, the failure to obtain injunctive relief from this Court will result in immediate and irreparable injury to Plaintiffs.

## Jurisdiction and Venue

**11.** This case raises questions under the Constitution of the United States and 42 U.S.C. § 1983, and thus this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331 and 1343(a).

**12.** The Western District of Washington is the proper venue for this case pursuant to 28 U.S.C. § 1391(b) because Defendants Reed and Galarza reside in this district, Plaintiff Protect Marriage Washington has its principle place of business in this district, and Plaintiffs John Doe #1 and John Doe #2 reside in Washington.

## Parties

13. Plaintiff John Doe #1 is an individual and resident of Stevens County, Washington. Plaintiff John Doe #1 signed the Referendum 71 petition.

14. Plaintiff John Doe #2 is an individual and resident of Cowlitz County, Washington. Plaintiff John Doe #2 signed the Referendum 71 petition.

15. Plaintiff Protect Marriage Washington is a State Political Committee organized pursuant to RCW § 42.17.040, to place Referendum 71 on the ballot and to encourage citizens to reject SB 5688, and has its principal place of business in Snohomish County, Washington.

16. Defendant Sam Reed is the Secretary of State of Washington. In his official capacity, Defendant Reed is responsible for receiving referendum petitions pursuant to RCW § 29A.72.010 and for making public records available pursuant to the Public Records Act. RCW § 42.56.001 *et seq.* The Office of the Secretary of State is also designated as a place where the public may file papers or correspond with the Public Disclosure Commission and receive any form or instruction from the Commission. RCW § 42.17.380.

17. Defendant Brenda Galarza is the Public Records Officer for Defendant Reed. Upon information and belief, Defendant Galarza has been appointed by Defendant Reed, pursuant to RCW § 42.56.580, to serve as the point of contact for members of the public when requesting disclosure of public records from the Secretary of State and to oversee the agency's compliance with the Public Records Act.

18. Defendant Rob McKenna is the Attorney General for the State of Washington. In his official capacity, Defendant McKenna is charged with supplying such assistance as the Public Disclosure Commission may require. RCW § 42.17.380. Defendant McKenna is also granted the authority to investigate and bring civil actions on behalf of the state for any violations of the PDL. RCW § 42.17.400.

19. Defendant Jim Clements is the Chair of the Public Disclosure Commission. Defendant Clements is sued in his official capacity and is subject to the jurisdiction of this Court. Defendants David Seabrook, Jane Noland, and Ken Schellberg are commissioners of the Public

1 Disclosure Commission. They are sued in their official capacity. The Public Disclosure  
2 Commission is granted the authority to enforce the PDL, RCW § 42.17.360(7).

3 **20.** Defendant Carolyn Weikel is the Auditor of Snohomish County, Washington. In her  
4 official capacity, Defendant Weikel is charged with receiving copies of reports filed by Plaintiff  
5 Protect Marriage Washington. RCW §

### 6 **Facts**

7 **21.** Pursuant to Wash. Const. art. II, § 1(b), the referendum power is reserved by the people  
8 of Washington State.

9 **22.** The referendum power grants Washington citizens the right to call a referendum on any  
10 act, bill, law, or any part thereof passed by the legislature by submitting a petition to that effect to  
11 the Secretary of State. Wash. Const. art. II, § 1(b).

12 **23.** If a petition submitted to the Secretary of State contains at least four percent of the votes  
13 cast for the office of governor at the last gubernatorial election preceding the filing of the  
14 referendum petition, the effective date of the act, bill, law, or any part thereof is delayed until the  
15 electorate has an opportunity to vote on the referendum. Wash. Const. art. II, §§ 1(b) & (d).

16 **24.** An act, bill, law, or any part thereof, subject to a referendum, becomes law only if a  
17 majority of the votes cast are in favor of the referendum. Wash. Const. art. II, § 1(d).

18 **25.** On January 28, 2009, Washington State Senator Ed Murray introduced Senate Bill  
19 5688 (“SB 5688”), a bill designed to expand the rights, responsibilities, and obligations accorded  
20 state-registered same-sex and senior domestic partners to be equivalent to those of married  
21 spouses. The legislation is commonly referred to simply as the “everything but marriage”  
22 domestic partnership bill.

23 **26.** On March 10, 2009, after various amendments, the Washington Senate passed Second  
24 Substitute Senate Bill 5688.

25 **27.** On April 15, 2009, the Washington House of Representatives passed Second Substitute  
26 Senate Bill 5688.

1       **28.** On or about May 4, 2009, Larry Stickney filed notice with the Secretary of State of his  
2 intent to circulate a referendum petition related to SB 5688. The Secretary of State assigned the  
3 title "Referendum 71."

4       **29.** On or about May 13, 2009, Protect Marriage Washington organized as a State Political  
5 Committee pursuant to RCW § 42.17.040.

6       **30.** Protect Marriage Washington's purpose is to circulate a referendum petition on SB 5688  
7 and to encourage voters to reject SB 5688.

8       **31.** Larry Stickney is the campaign manager of Protect Marriage Washington.

9       **32.** As the campaign manager for Protect Marriage Washington, Larry Stickney has  
10 received a large number of emails from people who disagree with his position on marriage. True  
11 and correct copies of some of these emails are attached to this Complaint as Exhibit 1. Some of  
12 these emails are threatening and/or harassing. For example, one threatening email states: "You  
13 better stay off the olympic peninsula. . it's a very dangerous place filled with people who hate  
14 racists, gay bashers and anyone who doesn't believe in equality. Fair is fair." Another email  
15 threatened the signers of the Referendum 71 petition with boycotts: "We shall boycott the  
16 businesses of EVERYONE who signs your odious, bigoted petition." Other emails are offensive  
17 and harassing: "Dear God fearing hate mongerers - . . . Maybe you just want to feel a cock in  
18 your ass and hate yourself for it. Whatever. Praise Jeebus you retarded fuckholes!"

19       **33.** These threats have caused Larry Stickney a great deal of worry for his safety and the  
20 safety of his family.

21       **34.** Early in the campaign to circulate the Referendum 71 petition, Larry Stickney made his  
22 children sleep in an interior living room because he feared for their safety if they slept in their  
23 own bedrooms.

24       **35.** In late June an individual was seen taking pictures of Larry Stickney's home while his  
25 daughter played outside.

26       **36.** Larry Stickney filed a complaint with his local sheriff because of threats on a local blog.  
27 One of the blog posts stated: "If Larry Stickney can do 'legal' things that harm OUR family, why  
28

1 can't we go to Arlington, WA to harm his family?" A true and correct copy of Larry Stickney's  
2 email correspondence with the Sheriff is attached to the Complaint as Exhibit 2.

3 37. Larry Stickney has also received threatening and harassing phone calls from individuals  
4 in the middle of the night. For example, shortly after Referendum 71 was presented to the  
5 Secretary of State on May 4, 2009, he received a phone call at 2:00 a.m. from a woman who  
6 sounded frantic and deranged, and who said various obscene and vile things to him.

7 38. Since Referendum 71 was submitted to the Secretary of State for review on May 4,  
8 2009, numerous news sources and blogs have focused their attention on intimate details of Larry  
9 Stickney's personal life. For example, "The Stranger," an alternative Seattle newspaper,  
10 published details of his divorce that occurred fifteen years ago. A true and correct copy of that  
11 article is attached to this Complaint as Exhibit 3.

12 39. On May 18, 2009, Washington Governor Christine Gregoire signed Engrossed Second  
13 Substitute Senate Bill 5688.<sup>1</sup>

14 40. Upon information and belief, the group WhoSigned.org threatened to publish the names  
15 of every individual signing the Referendum 71 petition on or about June 1, 2009.

16 41. Upon information and belief, Plaintiffs believe that WhoSigned.org intends to make an  
17 end-run around RCW § 29A.72.230 (prohibiting proponents and opponents of a referendum  
18 petition from making records of the names, addresses, and other information on the petition  
19 during the verification and canvass process), by requesting copies of the petitions submitted  
20 pursuant to Washington's Public Records Act, RCW § 42.56.001 *et seq.*

21 42. On or about June 2, 2009, Dave Ammons, communications director for Defendant  
22 Reed, posted a blog entry on the Secretary of State's website suggesting that the Secretary of  
23 State intended to comply with WhoSigned.org's Public Records request. A true and correct copy  
24 of that blog post is attached hereto as Exhibit 4.

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28 <sup>1</sup> The enacted legislation subject to the referendum petition will be referred to simply as SB 5688.



1       **43.** On or about June 9, 2009, the group KnowThyNeighbor.org issued a joint press release  
2 with WhoSigned.org again threatening to publish the names on the internet of every individual  
3 signing the Referendum 71 petition.

4       **44.** KnowThyNeighbor.org and WhoSigned.org have publicly stated that they intend to  
5 publish the names of petition signers on the internet and to make the names searchable.

6       **45.** KnowThyNeighbor.org and WhoSigned.org have stated that the purpose of placing the  
7 names on the internet is to encourage individuals to contact any person who signed the  
8 Referendum 71 petition.

9       **46.** The news media has widely reported that KnowThyNeighbor.org and WhoSigned.org  
10 intend to publish the names of any individual who signs the petition on the internet.

11       **47.** On Saturday, July 25, 2009, Protect Marriage Washington submitted the petition with  
12 over 138,500 signatures to Defendant Reed, exceeding the number of signatures necessary to  
13 place a referendum question on the ballot.

14       **48.** By filing the petition, Plaintiffs have delayed the effective date of SB 5688. If the  
15 Secretary of State determines that petition contains a sufficient number of valid signatures, SB  
16 5688 will become law only if a majority of Washington residents vote to “approve” the bill at the  
17 next general election.

18       **49.** Defendant Reed is responsible for verifying and canvassing the signatures on the  
19 Referendum 71 petition. Proponents and opponents of Referendum 71 are permitted to have  
20 representatives present during the verification and canvass process. The statute prohibits  
21 proponents and opponents who are observing the verification and canvass process from making  
22 any records of the names, addresses, or other information contained on the petitions. RCW §  
23 29A.72.230.

24       **50.** Plaintiff Protect Marriage Washington, and its officers and directors have been subject  
25 to threats, harassment, and reprisals while attempting to gather the signatures necessary to place  
26 Referendum 71 on the ballot.

27       **51.** Petition circulators have been subjected to threats, harassment, and reprisals as they  
28 attempted to obtain the signatures necessary to place Referendum 71 on the ballot.

1       **52.** Defendant Galarza has stated that referendum petitions are “public records” within the  
2 meaning of RCW § 42.56.10(2) and are subject to public disclosure pursuant to RCW §  
3 42.56.070.

4       **53.** Given the threats, harassment, and reprisals directed at Plaintiff Protect Marriage  
5 Washington, petition signers, and supporters of a traditional definition of marriage across the  
6 country, there is a reasonable probability that the disclosure of those who signed the Referendum  
7 71 petition, including disclosure of the addresses of petition signers, will result in threats,  
8 harassment, and reprisals.

9       **54.** The threatened publication of the petitions has created an environment that discourages  
10 Washington citizens from exercising their First Amendment rights to participate in the  
11 referendum process.

12       **55.** The threatened publication of the petitions discourages individuals and organizations  
13 from exercising their First Amendment rights to support the effort to encourage Washington  
14 citizens to reject SB 5688.

15       **56.** Persons would like to contribute more than \$5,000 to Protect Marriage Washington  
16 during the twenty-one days preceding the campaign, and Protect Marriage Washington would  
17 like receive contributions in excess of \$5,000 during the twenty-one days preceding the election.

18       **57.** Potential donors to Protect Marriage Washington have indicated that they are unwilling  
19 to donate if Protect Marriage Washington is required to report their name and address pursuant to  
20 the PDL.

21       **58.** Protect Marriage Washington has received contributions in excess of \$25 and is  
22 required to report the name and address of those contributors.

23       **59.** Protect Marriage Washington has received contributions in excess of \$100 and is  
24 required to report the occupation, employer, and employer’s address of those contributors.

25 **The Washington Public Disclosure Law**

26       **60.** The PDL defines a “political committee” in relevant part as “any person having the  
27 expectation of receiving contributions or making expenditures in support of, or opposition to, any  
28 candidate or any ballot proposition.” RCW § 42.17.020(39).

1       **61.** “Ballot proposition” is defined in relevant part as “any . . . initiative, recall, or  
2 referendum proposition proposed to be submitted to the voters of the state.” RCW §  
3 42.17.020(4).

4       **62.** “Person” is defined as “an individual, partnership, joint venture, public or private  
5 corporation, association, federal, state, or local governmental entity or agency however  
6 constituted, candidate, committee, political committee, political party, executive committee  
7 thereof, or any other organization or group of persons, however organize.” RCW §  
8 42.17.020(36).

9       **63.** “Contribution” is defined broadly and includes legal and professional services  
10 performed on a *pro bono* basis to a political committee. RCW § 42.17.020(15); Wash. Admin.  
11 Code 390-17-405(2). *See also* Public Disclosure Commission, *2009 Campaign Disclosure*  
12 *Instructions*, at 24 & 31 (July 2009).

13       **64.** The PDL imposes numerous record keeping and reporting requirements on political  
14 committees, including, but not limited to: registration statements, campaign statements, political  
15 advertising reports, identification of major contributors on political advertising, late contribution  
16 reports, and major donor reports. *See* RCW §§ 42.17.040 (registration statement); 42.17.080  
17 (campaign statements); 42.17.510 (identification of sponsors); 42.17.105 (late contribution  
18 reports); 42.17.180 (major donor reports).

19       **65.** Protect Marriage Washington and major donors are required to file reports with the  
20 Public Disclosure Commission and the local county auditor or elections officer. *See, e.g.*, RCW  
21 §§ 42.17.040(1) & 42.17.080(1).

22       **66.** The Public Disclosure Commission is required to keep copies of reports for ten years.  
23 RCW § 42.17.450. All other recipients of reports (*i.e.* county auditor or elections officer) are  
24 required to keep copies for six years. RCW § 42.17.450.

25       **67.** Pursuant to RCW § 42.17.3691, a political committee that expects to expend more than  
26 \$10,000 in the current year must file all reports electronically with the Commission. RCW §  
27 42.17.3691.

1       **68.** All statements and reports filed in accordance with the PDL are public records of the  
2 agency where they are filed and must be made available to the public during normal business  
3 hours. RCW § 42.17.440.

4       **69.** Pursuant to RCW § 42.17.080(5), a political committee must make its books and  
5 accounts available for public inspection during the eight days preceding the election.

6       **70.** Pursuant to RCW § 42.17.367, the Public Disclosure Commission is required to make  
7 copies of all statements and reports available on the internet. *See also* [http://www.pdc.wa.gov/](http://www.pdc.wa.gov/QuerySystem/Default.aspx)  
8 [QuerySystem/Default.aspx](http://www.pdc.wa.gov/QuerySystem/Default.aspx).

9       **71.** RCW § 42.17.090 provides, in relevant part, that each report required under RCW §  
10 42.17.080 shall disclose:

11       the *name and address* of each person who has made one or more contributions during the  
12 period, together with the money value and date of such contributions and the aggregate  
13 value of all contributions received from each such person during the campaign . . .  
14 PROVIDED FURTHER, That contributions of no more than twenty-five dollars in the  
aggregate from any one person during the election campaign may be reported as one lump  
sum so long as the campaign treasurer maintains a separate and private list of the name,  
address, and amount of each such contributor . . . .

15 RCW § 42.17.090 (emphasis added).

16       **72.** Pursuant to Wash. Admin. Code 390-16-034, all reports required under RCW §  
17 42.17.080 shall also disclose the occupation, employer's name, and employer's address of each  
18 person who has made one or more contributions in the aggregate amount of more than \$100.  
19 Wash. Admin. Code 390-16-034 (emphasis added).

20       **73.** Furthermore, the PDL provides that:  
21 it is a violation of this chapter for any person to make, or for any candidate or political  
22 committee to accept from any one person, contributions reportable under RCW 42.17.090  
23 in the aggregate . . . exceeding five thousand dollars for any other campaign subject to the  
provisions of this chapter within twenty-one days of a general election.  
24 RCW § 42.17.105(8).

25       **74.** Any person who violates a provision of the PDL is subject to civil fines and sanctions.  
26 RCW § 42.17.390. The PDL authorizes treble damages, RCW § 42.17.400(5), and provides that  
27 the State may be awarded attorney's fees and costs of investigation and trial in a successful  
28 action. RCW § 42.17.400(5).

1       **75.** Plaintiffs have suffered, or will suffer, irreparable harm if the requested relief is not  
2 granted.

### 3                   **Legal Arguments Common to Plaintiffs' Claims**

4       **76.** “The First Amendment is the pillar of a profound national commitment to the principle  
5 that debate on public issues should be uninhibited, robust, and wide-open . . .” *Mont. Right to*  
6 *Life v. Eddlemann*, 999 F. Supp. 1380, 1384 (D. Mont. 1998).

7       **77.** “In the free society ordained by our Constitution it is not the government, but the  
8 people—individually as citizens and candidates and collectively as associations and political  
9 committees—who must retain control over the quantity and range of debate on public issues in a  
10 political campaign.” *Buckley v. Valeo*, 424 U.S. 1, 57 (1976).

11       **78.** In *Buckley*, the Supreme Court held that any significant encroachment on First  
12 Amendment rights, such as those imposed by compelled disclosure provisions, must survive  
13 exacting scrutiny, which requires the government to craft a narrowly tailored law to serve a  
14 compelling government interest. *Buckley*, 424 U.S. at 64.

15       **79.** The Supreme Court has recognized that the principles applied in *Buckley* apply as  
16 forcefully to activities surrounding the referenda process. *See Buckley v. Am. Constitutional Law*  
17 *Found.*, 525 U.S. 182, 192 (1999) (“[T]he First Amendment requires us to be vigilant in making  
18 those judgments, to guard against undue hindrances to political conversations and the exchange  
19 of ideas. We therefore detail why we are satisfied that . . . the restrictions in question  
20 significantly inhibit communication with voters about proposed political change, and are not  
21 warranted by the state interests (administrative efficiency, fraud detection, informing voters)  
22 alleged to justify those restrictions.”) (internal citations omitted); *CARC*, 454 U.S. at 295  
23 (applying *Buckley*’s contribution limit analysis in the context of ballot measure elections).

24       **80.** The Public Records Act, in so far as it results in the public disclosure of the names and  
25 addresses of petition signers, results in compelled political speech.

26       **81.** The PDL also results in compelled political speech.  
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1       **82.** The Supreme Court has repeatedly reaffirmed that “compelled disclosure, in itself, can  
2 seriously infringe on privacy of association and belief guaranteed by the First Amendment.”  
3 *Davis v. FEC*, 128 S. Ct. 2759, 2774-75 (2008) (quoting *Buckley*, 424 U.S. at 64.

4       **83.** To survive exacting scrutiny, the Public Records Act and the PDL must be narrowly  
5 tailored to serve a compelling government interest. *Buckley*, 424 U.S. at 64.

6       **84.** The burden is on the State to demonstrate that the Public Records Act and the PDL are  
7 narrowly tailored to serve a compelling state interest. *Cal. Pro-Life Council, Inc. v. Randolph*,  
8 507 F.3d 1172, 1178 (9th Cir. 2007) (citing *Republican Party of Minnesota v. White*, 536 U.S.  
9 765, 774-75 (2002)).

10       **85.** In the context of the First Amendment, the usual deference granted to the legislature  
11 does “not foreclose [a court’s] independent judgment of the facts bearing on an issue of  
12 constitutional law.” *Turner Broad. Sys. v. FEC*, 512 U.S. 622, 666 (1994) (internal citations  
13 omitted). The Court’s role is to ensure that the legislature “has drawn *reasonable inferences*  
14 based on *substantial evidence*.” *Id.* (emphasis added).

15       **86.** The Supreme Court has stated that three governmental interests may justify campaign  
16 disclosure laws if the regulations are narrowly tailored to serve those interests. *Buckley*, 424 U.S.  
17 at 66-68 (identifying a “informational interest,” a “corruption interest,” and an “enforcement  
18 interest.”).

19       **87.** However, *Buckley* involved only candidate elections, and the courts have clarified that  
20 the “corruption” and “enforcement” interests are inapplicable in the context of referenda  
21 elections. *Bellotti*, 435 U.S. at 790. (“The risk of corruption perceived in cases involving  
22 candidate elections simply is not present in a popular vote on a public issue.”); *Cal. Pro-Life*  
23 *Council, Inc. v. Getman*, 328 F.3d 1088, 1105 n. 23 (“The interest in collecting data to detect  
24 violations also does not apply since there is no cap on ballot-measure contributions . . .”).

25       **88.** The Ninth Circuit recently held that compelled disclosure of *de minimis* support of a  
26 referenda is also unconstitutional under the First Amendment. See *Canyon Ferry Road Baptist*  
27 *Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009).

1       **89.** The Supreme Court has also indicated that limits and thresholds that are not indexed for  
2 inflation “will almost inevitable become too low over time.” *Randall v. Sorrell*, 548 U.S. 230,  
3 261 (2006).

4       **90.** Furthermore, even if the Public Records Act or the PDL are narrowly tailored to serve a  
5 compelling government interest, they remain unconstitutional because the compelled disclosure  
6 that will occur will result in a reasonable probability of threats, harassment, and reprisals. *See*  
7 *Brown v. Socialist Workers ‘74 Campaign Comm.*, 459 U.S. 87 (1982) (applying the reasonable-  
8 probability test announced in *Buckley*, 424 U.S. at 73).

9       **Count I – The Public Records Act is Unconstitutional As Applied to**  
10 **Referendum Petitions**

11       **91.** Plaintiffs incorporate here by reference paragraphs one through eighty-eight (88), *supra*,  
12 as if fully set forth herein.

13       **92.** The Public Records Act violates the First Amendment as applied to referendum  
14 petitions because the Public Records Act is not narrowly tailored to serve a compelling  
15 government interest.

16       **93.** WHEREFORE, Plaintiffs request the following relief:

- 17       **a.** Declare RCW § 42.56.070 unconstitutional to the extent that it requires the Secretary of  
18 State to make referendum petitions submitted to the Secretary of State’s office available to  
19 the public;  
20       **b.** Enjoin Defendants from making referendum petitions available to the public pursuant to  
21 the Public Records Act, RCW § 42.56.001 *et seq.*, or otherwise;  
22       **c.** Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs  
23 and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and  
24       **d.** Any and all other such relief as may be just and equitable.  
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1 **Count II – The Public Records Act is Unconstitutional As Applied to**  
2 **the Referendum 71 Petition Because There is a Reasonable**  
3 **Probability of Threats, Harassment, and Reprisals**

4 94. Plaintiffs incorporate here by reference paragraphs one through eighty-eight (88), *supra*,  
5 as if fully set forth herein.

6 95. In the alternative, the Public Records Act is unconstitutional as applied to the  
7 Referendum 71 petition because there is a reasonable probability that the signatories of the  
8 Referendum 71 petition will be subjected to threats, harassment, and reprisals.

9 96. WHEREFORE, Plaintiffs request the following relief:

10 a. Declare RCW § 42.56.070 unconstitutional to the extent that it requires the Secretary of  
11 State to make the Referendum 71 petition, or any petition related to the definition or  
12 marriage or the rights and responsibilities that should be accorded to same-sex couples,  
13 submitted to the Secretary of State's office available to the public;

14 b. Enjoin Defendants from making the Referendum 71 petition, or any petition related to  
15 the definition or marriage or the rights and responsibilities that should be accorded to same-  
16 sex couples, available to the public pursuant to the Public Records Act, RCW § 42.56.001 *et*  
17 *seq.*, or otherwise;

18 c. Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs  
19 and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and

20 d. Any and all other such relief as may be just and equitable.

21 **Count III — The Public Disclosure Law's Requirement that Political**  
22 **Committees Report All Contributors of \$25 or More is**  
23 **Unconstitutional**

24 97. Plaintiffs incorporate here by reference paragraphs one through eighty-eight (88), *supra*,  
25 as if fully set forth herein.

26 98. The PDL's requirement that political committees report the name and address of all  
27 contributors of more than \$25, and the occupation, employer, and employer's address of  
28 contributors of more than \$100, violates the First Amendment because the disclosure thresholds  
are not narrowly tailored to serve a compelling government interest.



1       **99.** WHEREFORE, Plaintiffs request the following relief:

2       **a.** Declare RCW § 42.17.090 unconstitutional to the extent that it requires Protect  
3       Marriage Washington and all other similar persons to report the name and address of  
4       contributors of more than twenty-five dollars;

5       **b.** Declare Wash. Admin. Code 390-16-034 unconstitutional to the extent that it requires a  
6       Protect Marriage Washington and all other similar persons to report the occupation,  
7       employer, and employer's address of contributions of more than one hundred dollars;

8       **c.** Order Defendants to expunge all records containing the name, address, occupation,  
9       employer, and/or employer's address for any contributor reported pursuant to RCW §  
10      42.17.090 and/or Wash. Admin. Code 390-16-034;

11      **d.** Enjoin Defendants from commencing any civil actions for failing to comply with RCW  
12      § 42.17.090(1)(b) or Wash. Admin. Code 390-16-034;

13      **e.** Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs  
14      and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and

15      **f.** Any and all other such relief as may be just and equitable.

16      **Count IV — The Public Disclosure Law's Prohibition on Aggregate**  
17      **Contributions Exceeding \$5,000 to a Single Political Committee During**  
18      **the Twenty-One Days Preceding an Election is Unconstitutional As**  
19      **Applied to Referenda Elections**

20      **100.** Plaintiffs incorporate here by reference paragraphs one through eighty-eight (88),  
21      *supra*, as if fully set forth herein.

22      **101.** The PDL's \$5,000 contribution limit during the twenty-one days preceding a  
23      referendum elections violates the First Amendment because it is not narrowly tailored to serve a  
24      compelling government interest.

25      **102.** WHEREFORE, Plaintiffs request the following relief:

26      **a.** Declare RCW § 42.17.105(8) unconstitutional to the extent that it prohibits Protect  
27      Marriage Washington and all other similar persons from receiving contributions in excess of  
28      \$5,000 during the twenty-one days preceding a ballot proposition election;

- 1       **b.** Enjoin Defendants from enforcing RCW § 42.17.105(8) against Protect Marriage  
2 Washington and all other similar persons;
- 3       **c.** Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs  
4 and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and
- 5       **d.** Any and all other such relief as may be just and equitable.

6       **Count V — The Public Disclosure Law is Unconstitutional As Applied**  
7 **to Plaintiff Protect Marriage Washington Because There is a**  
8 **Reasonable Probability of Threats, Harassment, and Reprisals**

9       **103.** Plaintiffs incorporate here by reference paragraphs one through eighty-eight (88),  
10 *supra*, as if fully set forth herein.

11       **104.** There is a reasonable probability that the disclosure of the identities of persons  
12 supporting Referendum 71 will be subjected to threats, harassment, and reprisals if their names,  
13 addresses, occupations, employers, and employers' addresses are disclosed.

14       **105.** The continued availability of any reports already filed creates a reasonable  
15 probability that any individual identified on those reports will be subjected to threats, harassment,  
16 and reprisals.

17       Prayer for Relief

18       **106.** WHEREFORE, Plaintiffs request the following relief:

- 19       **a.** Declare all registration, reporting, and disclaimer requirements unconstitutional as  
20 applied to Plaintiffs and all other persons holding a similar view;
- 21       **b.** Enjoin Defendants from enforcing all registration, reporting, and disclaimer  
22 requirements against Plaintiffs and all other persons holding a similar view;
- 23       **c.** Order Defendants to expunge all records filed by Plaintiffs, and all of their contents,  
24 together with all records of Plaintiffs and all other persons holding a similar view;
- 25       **d.** Grant Plaintiffs John Doe #1, John Doe #2, and Protect Marriage Washington their costs  
26 and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and
- 27       **e.** Any and all other such relief as may be just and equitable.
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Dated this 25th day of September, 2009.

**Verified 1st Am. Compl.**  
**(No. 3:09-cv-05456-BHS)**

1 Dated this 25th day of September, 2009.

2 Respectfully submitted,

3  
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